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**REPORT No. 124/24**  
**PETITION 301-14**  
INADMISSIBILITY REPORT

TULIO CORTES GIRALDO & FAMILY  
COLOMBIA

Approved electronically by the Commission on August 29, 2024.

**Cite as:** IACHR, Report No. 124/24. Petition 301-14. Inadmissibility. Tulio Cortes Giraldo and family. Colombia. August 24, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Tulio Cortes Giraldo
<b>Alleged victims:</b>	Tulio Cortes Giraldo and family <sup>1</sup>
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Articles 7 (personal liberty), 8 (fair trial), 10 (compensation), and 11 (privacy) of the American Convention on Human Rights <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	March 4, 2014
<b>Additional information received at the stage of initial study:</b>	October 22, 2014
<b>Notification to the State:</b>	November 2, 2021
<b>State's first response:</b>	March 17, 2022
<b>Notification of possible archiving:</b>	October 28, 2020
<b>Petitioner's response to notification of possible archiving:</b>	November 3, 2020

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (ratifying instrument deposited on July 31, 1973)

**IV. DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of proceedings and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

<sup>1</sup> The initial petition brief lists Mr. Cortes' family members as: 1. Liliana Patricia Aristizábal Arias (wife); 2. Laura Cortes Aristizábal (daughter); and 3. Daniela Cortes Aristizábal (daughter).

<sup>2</sup> In accordance with the provisions of Article 17.2.a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or in the decision on this matter.

<sup>3</sup> Hereinafter, "the American Convention" or "the Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. POSITIONS OF THE PARTIES

### *The petitioner*

1. Mr. Tulio Cortes Giraldo (hereinafter “Mr. Cortes”), the petitioner and alleged victim, denounces alleged violations of his human rights due to the unjust deprivation of his liberty in the context of a criminal investigation conducted against him, which was terminated due to a lack of evidence. He alleges that he did not receive adequate compensation for the injury suffered in the administrative proceeding, followed by his unjust incarceration.

2. The information in the file indicates that in May 1989 Mr. Cortes, an engineer by profession, began to work in a consortium of companies that performed maintenance works on the *Caño Limon-Coveñas* oil pipeline, on the Zulia river-El Paso section. It mentions that the referenced pipeline was the subject of several attacks by paramilitary groups such as the National Liberation Army (ELN), who dynamited sections of the pipeline, causing the spilling of thousands of barrels of petroleum.

3. On December 16, 1996, as part of the procedures involved in the investigation of the attacks, Mr. Cortes was interrogated at the facilities of the Office of the General Prosecutor of the Nation. On December 20, 1996, a detention order was issued against him, and he was transferred to *La Modelo* prison, for his alleged responsibility in the crimes of terrorism and criminal conspiracy. On December 1, 1997, the Special Terrorism Unit of the Regional Directorate of the Prosecutor’s Offices terminated the investigation because it found no evidence for a formal indictment, releasing him on December 3 of that same year.

4. Subsequently, on December 1, 1999, his legal representative filed an action seeking direct reparations with the Administrative Court of Cundinamarca, seeking to establish the administrative responsibility of the Office of the General Prosecutor of the Nation for the damages and injuries caused to Mr. Cortes, his wife, his two daughters, his two parents, and his six siblings, for the year he was unjustly deprived of his liberty.

5. Through a ruling dated September 16, 2004, Subsection A, Section Three of the Administrative Court of Cundinamarca denied the claims made in the suit. On September 28, 2004, Mr. Cortes filed an appeal. On September 27, 2013, the Administrative Chamber, Subsection B, Section Three of the Council of State revoked the judgment on appeal and declared the Office of the General Prosecutor of the Nation materially liable for the moral and material damages suffered by the petitioners, as a consequence of the unjust deprivation of liberty that Mr. Cortes was the victim of between December 20, 1996 and December 2, 1997. The court justified its decision based on the following considerations:

[...] In this way, the Chamber deems that, based on the evidence alleged in the criminal proceeding, it is possible to infer, without difficulty, that Mr. Tulio Mario Cortes Giraldo did not commit the crime foisted upon him, so that he did not have to endure the deprivation of liberty that was imposed on him. Consequently, the challenged judgment will be revoked, in that the co-conspirator charge attributed to the petitioner did not exist.” [...] In sum, the respondent is responsible for the unlawful injury caused to the petitioner, in that it deprived him of liberty unjustly, between December 20, 1996 and December 2, 1997. The injustice is based on the fact that the conduct attributed to him did not occur, a situation that caused suffering, affliction, and material damages.

6. The petitioner alleges that the amount determined by the Council of State upon resolving the appeal was ridiculous and did not fully redress the moral and material damages caused by his incarceration, in addition to the fact that his personal and professional reputation was affected, preventing him from working in a position similar to the one he exercised prior to the criminal proceeding.

### *Colombian State*

7. The State confirms the sense of the rulings issued both in the criminal proceeding that denied the crimes imputed to Mr. Cortes and in the administrative proceeding initiated through the action seeking

direct reparations. In addition, it adds that on June 26, 2018 the Office of the General Prosecutor of the Nation paid, in compliance with the judgment issued by the Administrative Chamber of the Council of State, the amount of US\$ 36,697 in favor of Mr. Cortes and his family members who were party to the suit.

8. Moreover, Colombia asks the IACHR to have this petition declared inadmissible based on two considerations: (a) the petitioner seeks to have the Commission act as an appellate court or an “international fourth instance;” and (b) the petition presents manifestly groundless charges.

9. As for point (a) regarding the fourth instance, the State indicates that the resolution of September 27, 2013 issued by the Administrative Chamber, Subsection B, Section Three of the Council of State determined State responsibility for the unjust deprivation of Mr. Cortes’ liberty, so that it ordered payment of an indemnity in his favor and that of his family members, which was carried out on June 26, 2018 through resolution No. 1098 issued by the Office of the General Prosecutor of the Nation.

10. It also maintains that in the context of the administrative proceeding the decisions issued in the criminal context were taken into account, particularly when resolving the appeal. For this reason, it maintains that the petitioner seeks to have the IACHR act as an appellate court to review the decisions made in the domestic arena, which were duly grounded and consistent with the provisions of domestic law, and whose judges acted with independence, impartiality, and in accordance with the procedural guarantees.

11. Regarding point (b), it indicates literally that: “[...] *it is clear that the petitioners’ claim is intended not only to question the decisions made on the domestic level, but also to allege before the Commission a violation that is, clearly, manifestly groundless. The petitioner resorted to the domestic jurisdiction to allege the violation of his rights and the State’s duty to make reparations, which was granted to him. On this point, it is evident that there are no evidentiary elements that provide factual and legal minimums making it possible to discern the existence of a violation of the Convention.*”

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

12. The Commission observes that the subject of this petition is the inadequate economic reparations provided in the context of the administrative proceeding initiated by Mr. Cortes and his family members, on the occasion of his unjust incarceration.

13. In this regard, the Commission observes that the petitioner filed an action for direct reparations for these injuries, which were denied in the first instance on September 16, 2004 by Subsection A, Section Three of the Administrative Court of Cundinamarca. In the appeal challenging that ruling, on September 27, 2013, the Administrative Chamber, Subsection B, Section Three of the Council of State reversed the referenced decision and declared the Office of the General Prosecutor of the Nation materially responsible for the moral and material damages suffered by Mr. Cortes and his family members.

14. In view of the preceding, the IACHR deems that the requirement established in Article 46.1.a) of the American Convention was complied with in the decision of the Council of State issued on September 27, 2013, which definitively concluded the administrative proceeding in the domestic arena, in which an indemnity was granted for moral and material damages in favor of Mr. Cortes and his family members.

15. As for the timeliness of the petition, as has been indicated in this section, the final decision was issued in the context of the administrative proceeding on September 27, 2013. Thus, considering that the petition was received by the Executive Secretariat of the IACHR on March 4, 2014, it is concluded that it also complies with the requirement provided in Article 46.1.b) of the Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

16. The Commission observes that this petition includes allegations relating to the amount of the indemnity recognized by the Administrative Chamber of the Council of State in favor of Mr. Cortes and his

family members. Colombia posits that the petitioners seek to use the IACHR as an appellate court to review the decision adopted by the Council of State, even though it was adopted on proper grounds and in accordance with the judicial guarantees enshrined in the American Convention.

17. The Commission reiterates that, for admissibility purposes, the Commission must decide whether the facts presented may characterize a violation of rights, as stipulated in Article 47.b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph c) of that article. The criterion for evaluating these requirements is different from that used to rule on the merits of a petition. In this regard, the Commission reiterates that it is not competent to review decisions issued by domestic courts acting within the sphere of their jurisdiction and applying due process and judicial guarantees. In addition, it recalls that the petitioners’ mere disagreement with the interpretation that the domestic courts have given to the relevant legal standards is not sufficient to constitute violations of the Convention. The interpretation of the law, the relevant procedure, and the evaluation of the evidence is, among other actions, an exercise of the function of the domestic jurisdiction, which cannot be replaced by the IACHR.<sup>5</sup> In this regard, the function of the Commission consists of guaranteeing the observance of the obligations assumed by the States party to the American Convention, but it cannot act as an appellate court to examine alleged legal or factual errors that the domestic courts may have committed while acting within the limits of their competence.<sup>6</sup>

18. Consistent with these criteria, and according to the information provided by the parties in the file for this petition, the Commission observes that the petitioner has not presented substantive elements of fact and law making it possible to establish that the decision made by the Council of State suffers from some defect or has violated some guarantee contemplated in the American Convention. Rather, the petitioner has maintained its disagreement with the amount of the indemnity established by that judicial body. Therefore, the Commission concludes that said allegation is inadmissible based on Article 47.b) of the American Convention, in that the facts presented do not indicate, not even on a *prima facie* basis, possible violations of the Convention.

### **VIII. DECISION**

1. To declare this petition inadmissible based on Articles 47.b) of the American Convention.
2. To notify the parties of this decision; and publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 29<sup>th</sup> day of the month of August, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

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<sup>5</sup> IACHR, Report No. 83/05. Petition 644-00. Inadmissibility. Carlos Alberto López Urquía. Honduras. October 24, 2005, paragraph 72.

<sup>6</sup> IACHR, Report No. 70/08. Petition 12.242. Admissibility. Pediatric Clinic of the Region of Los Lagos. Brazil. October 16, 2008, paragraph 47.